IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1022 OF 2007

Rustam Phiroze Mehta ..Petitioner

Vs.

The State of Maharashtra and ors. ..Respondents

Mr. Jimmy Mehta with Mr. H.G. Bhambhani for petitioner.
Mr. D.P. Adsule, APP for State.
Mr. A.H.H. Ponda for respondent no.2

CORAM: B.H. MARLAPALLE, J.

Date : August 04, 2007.

P.C.:

1. Heard Mr. Mehta the learned Senior Counsel with Mr. Bhambhani for the petitioner and Mr. Ponda the learned counsel for the respondent no.2. The learned APP appears for the State.

2. The petitioner and respondent no.2 are brother and sister and it appears that the sister filed an FIR with the Gamdevi Police Station, Mumbai on 5/3/2007 charging the brother to have stolen the painting

called as "Still life with apple". The painting was recovered by the police and, therefore, after the case was registered as C.C. No.83/N/2007, the respondent no.2-sister preferred an application for return of the property and the said application has been allowed by the impugned order dated 8/5/2007 passed by the learned Addl. Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai. The operative part of the impugned order reads as under:-

> ". The property be handed over to the applicant viz. Smt. Meher Devis Haya on her executing bond of Rs.55,00,000/- (Fifty five lacs) on usual terms and conditions, i) applicant will not dispose of the said property in any way and ii) will not create any charge over the said property in any way and iii) will produce the same in court as and when called, in the same condition.

3. The petitioner-brother claims that his mother in her Will had stated that the subject painting would go to him and, therefore, it cannot be a stolen property and it must remain in his possession. I have perused the terms of the Will and admittedly they are vague when it comes to the subject painting. Mr.Ponda, on the other hand, has placed on record some

documents to indicate, prima facie, that the subject painting has always been in the ancestral home at Mumbai, where the respondent no.2 presently stays. The learned counsel for the petitioner claims that the petitioner is presently staying at his house at Koregaon Park, Pune and as and when he comes to Mumbai he also stays in the family house at Mumbai where his sister is staying. The conditions imposed by the trial court while allowing the application submitted by the respondent no.2-sister are sufficient safeguards to ensure that the painting will remain intact and it will remain in the family home at Mumbai. I, therefore, do not find any case to take a different view than the one taken by the trial court in returning the property.

4. Petition is rejected with a further condition that the subject painting will always remain in the family home at Mumbai during the pendency of the complaint before the trial court.

(B.H. Marlapalle,J.)